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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/565,278	06/30/2006	Sheila Marie Schmutz	046423-0006US	7966
7590 Heenan Blaikie LLP 200 Bay Street P.O. Box 185, South Tower, Royal Bank Plaza Toronto, ON M5J 2J4 CANADA				
06/07/2010				
EXAMINER				
SALMON, KATHERINE D				
ART UNIT		PAPER NUMBER		
1634				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/565,278	Applicant(s) SCHMUTZ ET AL.
Examiner KATHERINE SALMON	Art Unit 1634

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 31 May 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet (See 37 CFR 1.116 and 41.33(a)).

4. ☒ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-9, 11, 20-21.
Claim(s) withdrawn from consideration: 10 and 12-15.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See continuation sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Sarae Bausch /
Primary Examiner, Art Unit 1634

Continuation of 3C: NOTE: The proposed amendments to the claims are not in compliance with 37 CFR 1.121 and as such are not entered. It is noted that IF these claims were submitted in proper form that they would be entered.

Continuation of 11: NOTE: The reply traverses the rejections of record.

A. The reply asserts that the amendment to Claim 2 overcomes the 35 USC 112/2nd paragraph of record (p. 7 1st two paragraph). This has been fully reviewed but has not been found persuasive. It is noted that the proposed amendments have not been entered and therefore this rejection is maintained. However, if the amendment were to be entered it would be sufficient to overcome this rejection.

B. The reply asserts that there are several statement in the application which state that rib eye area is determined by the number of C alleles and therefore that the inventors knew that CT animals had a smaller rib eye area than CC animals and a larger ribeye area than TT animals (p. 7 4th paragraph). The reply points to particular passages of the specification wherein recites that the number of C alleles was correlated to REA and that CC offspring will display the greater increase in REA size (p. 7 last 3 paragraph). The reply asserts that therefore the specification discloses that there is a linear effect such that animals with the CC and CT genotype have the phenotype of increased ribeye as compared to those with the TT genotype (p. 8 2nd paragraph).

These arguments have been fully reviewed but have not been found persuasive.

The claims as enter are not imitated to determining that animals with the CC and CT genotype have the phenotype of increased ribeye as compared to those with the TT genotype. Rather the claims are broadly drawn to determining whether a T/C polymorphism is present in one allele of position 150 of SEQ ID NO. 1. Therefore if the skilled artisan detects the T allele at this position it would not have an increased rib eye area. But based upon the arguments if animals are heterozygous for the C allele there is an association to increased ribeye. Therefore depending on which allele the skilled artisan detects in an heterozygous animal there is a different association. Therefore it is suggested that the claims be amended to recite that either a CC or a CT genotype is detected compared to an *bos Taurus* with a TT genotype.

C. The reply traverses the 35 USC 102(b) made in the previous office action. In the arguments the reply asserts that the Byatt et al. does not disclose the T allele but rather only teaches the wild type sequence (p. 8 3rd paragraph). The reply asserts that Byatt et al. does not teach determining rather there was the possibility of a T allele at this position (p. 8 4th paragraph). The reply asserts that therefore Byatt does not teach genotyping to determine which allele is at this position because no variation was known (p. 8 4th paragraph). The reply asserts that Byatt does not teach sorting animals into groups of like genotype because Byatt does not teach that the T allele exists (p. 8 5th paragraph). The reply asserts that Byatt does not teach determining rather a C residue exists or a T and assigning either the CC, CT, or TT genotype as the T residue was not known (p. 9 2nd paragraph).

These arguments have been fully reviewed but have not been found persuasive.

The reply appears to be arguing that because Byatt et al does not teach detecting the T allele it does not encompass the claims. However, the claims are not limited to requiring that the T allele is detected. Further, the sorting of the animals does not require the detection of a T allele. IN the case of Byatt et al, he teaches determining complete hybridization at position 150 and incomplete. Therefore the animals are sorted between those that have the C allele and those that do not. Therefore Byatt et al. broadly teaches all the positively recited method steps of the claims.